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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR AMERICO SANDOVAL,

Defendant and Appellant.

E031272

(Super.Ct.No. FCH04484)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown,
Judge. Affirmed.

Sally P. Brajevich, under appointment by the Court of Appeal, for the Defendant
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Gil P. Gonzalez,
Supervising Deputy Attorney General, and Andrew S. Mestman, Deputy Attorney
General, for Plaintiff and Respondent.

In an information filed by the district attorney of San Bernardino County, defendant was charged in count 1 with second degree burglary of a vehicle (Pen. Code, § 459), and in count 2 with receiving stolen property (Pen. Code, § 496, subd. (a)). It was also alleged defendant had served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b). On July 24, 2001, defendant pled not guilty to all counts and denied the prior prison term allegation.

On January 31, 2002, a jury found defendant guilty of both counts. Defendant admitted the prior prison term enhancement. Probation was denied. Defendant was sentenced to the upper term of three years on count 1 for the second degree burglary, plus one year for the prior prison term pursuant to Penal Code section 667.5, subdivision (b). Defendant was also sentenced to the upper term of three years on count 2, but the sentence was stayed, pursuant to Penal Code section 654. On March 8, 2002, defendant filed a notice of appeal from the judgment.

FACTS

On May 2, 2001, at 10:40 p.m., Martha Almazan watched from her kitchen window as defendant and two other men entered her apartment complex and went directly to one of her neighbor's cars. Almazan testified that she saw defendant and a second man looking inside the vehicle as a third man acted as a lookout. Defendant unlocked the passenger front door with a hanger, entered the vehicle, and popped the trunk open. Almazan left the kitchen and told her boyfriend Claudio Reigoza what she witnessed. Reigoza called the police and then both returned to the kitchen window.

Almazan witnessed defendant looking through the glove compartment or under the seat. Defendant then exited the vehicle and closed the doors. He placed some items into his backpack and walked out of the apartment complex. Almazan testified that defendant was wearing dark shorts, a dark T-shirt, white tube socks, and tennis shoes.

At 10:42 p.m., Officer Michael Sandoval of the Chino Police Department was dispatched to a vehicle burglary in progress. At 11:25 p.m., Officer Sandoval observed two men matching the suspects' description crossing the street. Officer Sandoval stopped defendant and another man and told them to sit on the ground and to place their backpacks on the ground. Officer Sandoval patted down defendant and the other man. Credit cards which had been stolen the day before were found on the ground between the backpacks. Defendant's backpack and pockets were empty. The other man had three credit cards.

Approximately seven to ten minutes after defendant left the apartment complex, Almazan and Reigoza were contacted by Officer Daniels. Officer Daniels took them individually to identify defendant and one other male approximately 20 to 30 minutes after defendant left the complex. Reigoza immediately identified defendant. Officer Daniels then took Reigoza back to his apartment and took Almazan to identify defendant. Almazan identified defendant as the individual with the hanger who had entered her neighbor's car.

DISCUSSION

1. Defendant's Request to Dismiss the Case.

Defendant contends his constitutional rights were violated when deputies repeatedly confiscated and destroyed his copies of the police reports and his notes.

Prior to trial, defense counsel informed the court she was not ready to proceed because the sheriff's office had not permitted defendant to bring his copies of the police reports with notes he had written on them to court. The court provided defendant with copies of the police reports and allowed him time to review the reports and make notes. Trial then commenced. Later, during the first day of trial, out of the presence of the jury, defense counsel moved for a mistrial. She argued that although defendant had been given copies of the documents previously taken from him by the deputies, the replacement occurred after the prosecution's main witnesses had already testified, rendering them of little value to defendant. The court denied the defense motion, stating:

"Okay. I believe that since we gave the defendant a continuance to reread the papers, make any notes he needed to make for counsel and confer with counsel, we put no time limit on that. It could have taken an hour or two hours, whatever the case may be. I don't believe there's been any prejudice to the defendant, and the request for dismissal is denied."

Defendant asserts the trial court erred in failing to grant his mistrial motion. On appeal, a denial of a mistrial motion is reviewed under the abuse of discretion standard. (*People v. Williams* (1997) 16 Cal.4th 153, 210.) "'A mistrial should be granted if the

court is apprised of prejudice that it judges incurable by admonition or instruction.

[Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.”’ (*People v. Wharton* (1991) 53 Cal.3d 522, 565, quoting *People v. Haskett* (1982) 30 Cal.3d 841, 854.) The defendant is required to show the seizure of his papers was prejudicial to the outcome of his case. (*People v. Memro* (1995) 11 Cal.4th 786, 836.)

Defendant contends this seizure was prejudicial to the outcome of his case because even though he was given copies of the police reports soon after his counsel made its first objection, the prosecution’s key witnesses testified before defendant was given a chance to reconstruct his notes. Defendant contends this prevented him from being able to provide assistance to his counsel when these prosecution witnesses were testifying. We find that this seizure of papers, coupled with the fact that the court immediately provided defendant with copies of his police reports did not result in a prejudicial outcome in his case. When defendant was given copies of his police reports and the prosecution witnesses began testifying, defendant was capable of examining these documents and assisting his counsel, who continuously had her own copies of the documents to prepare for trial. The trial court promptly provided defendant with copies of his police reports and allowed him time to review the reports prior to commencing trial. The trial court did not abuse its discretion when it denied defendant’s mistrial motion.

2. Prosecutorial Misconduct.

Defendant also contends the prosecutor committed misconduct during closing argument when she told the jury that the witnesses told the truth because if they lied defendant would come and do something to them. Defendant claims that this misconduct denied him of his federal due process rights.

During closing argument, the prosecutor told the jury that Almazan and Reigoza were telling the truth because they feared defendant would retaliate against them if they lied. The prosecutor stated: “Now, I’m going to make this argument to you. They are not going to come in here and point out this man if they are not sure that he is the one that they saw. There’s no way. They have everything to lose by doing that. Think about it. He knows where they live. Nobody wants to come in here and testify to something. Nobody wants to make anything up.”

Defendant’s counsel objected to the prosecutor’s comment as an improper argument. The court sustained the objection. ““To preserve for appeal a claim of prosecutorial misconduct, the defense must make a timely objection at trial and request an admonition; otherwise, the point is reviewable only if an admonition would not have cured the harm caused by the misconduct.”” (*People v. Kipp* (2001) 26 Cal.4th 1100, 1130, quoting *People v. Price* (1991) 1 Cal.4th 324, 447.) Here, the defense made a timely objection, but did not request an admonition. Defendant contends the prosecutor’s comment was so prejudicial that an admonishment “would not have erased the prejudicial

comment from the jurors' minds." Thus, he argues that the objection was sufficient.

(*People v. Earp* (1999) 20 Cal.4th 826, 858.)

The prosecutor's comments inferring defendant may be a violent individual were clearly improper given the nonviolent nature of this case. However, defendant fails to demonstrate that the prosecutor's comments were so prejudicial that an admonition would not have cured any potential harm. Defendant's argument that the prosecutor's statement was "extremely inflammatory" and prejudicial to defendant's case lacks merit. An admonition could have diminished any possible harm the prosecutor's statement may have had on the jury by instructing the jury to completely disregard the statement based on the fact that no evidence was introduced at trial demonstrating defendant was violent or threatening in any way.

Even if we assume error, the error was harmless because the evidence of defendant's guilt was very strong. The two witnesses who watched the burglary identified defendant, individually, shortly after the crime. Several credit cards belonging to more than one victim were found on the ground between defendant and his friend, and in the friend's pocket. It is reasonable for the jury to conclude from the evidence presented at trial, and not by the improper comment of the prosecutor, that defendant was one of the individuals who burglarized the car.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

GAUT

J.